

# Terms and Conditions

01 JANUARY 2022– VERSION 5.0



**BORSA ITALIANA**

## Foreword and Interpretation

This document sets out the general terms and conditions for the use, display, dissemination and reporting of Data as provided by Borsa Italiana S.p.A. ("BIT").

This document provides a unified set of terms for subscribers of BIT's suite of Data products, and together with the Schedules and the Order, form the Agreement and independent legal relationship between BIT and the Customer.

Please also refer to the relevant policies and price lists applicable to your subscription set out in the Schedules (as amended by BIT from time to time) for further rules and guidance: Schedule A: Policy Schedule; Schedule B: Price List; Schedule C: Reporting; Schedule D: Direct Reporting and Schedule E: Market Data Audit Guidelines.

## 1. Definitions

1.1 In this Agreement, unless the context requires otherwise, the following words shall have the following meanings:

<b>Agreement</b>	means these Terms, the Order, and the Schedules
<b>ATP</b>	means an alternative trading platform, including trading/betting platforms, platforms for contracts for difference (CFD), binary options, spread betting instruments and similar instruments
<b>BIT</b>	means Borsa Italiana S.p.A.
<b>BIT Verifier</b>	has the meaning ascribed to it in Clause 15
<b>Commencement Date</b>	means the date agreed by the parties in the executed Order, and if no date specified, the latest date of signature on the first Order
<b>Customer</b>	means the person or entity named in the Order
<b>Data</b>	means the data provided by BIT under this Agreement

**Charges**

means charges identified as such in Schedule B, the Market Data Price List

**Device**

means any terminal (fixed or portable), display unit, or any other piece of apparatus which may receive or display (whether concurrently or otherwise) the Data, whether in whole or in part

**Derived Data**

means any and all data created or derived from, or on the basis of, the Data using calculations, computations or any other mathematical or other manipulations or processes applied to the Data and that cannot be reverse engineered back to the Data or used as a replacement or substitute for the Data.

**Derived Data ATP**

means an ATP permitting trading instruments the price or value of which is based on, or linked to, the Derived Data

**Direct Reporting**

means the reporting of Data usage by End Customers direct to BIT, in accordance with these Terms and Schedule D, Direct Reporting

**Direct Reporting Customer**

means a Customer who has been authorized by BIT to undertake Direct Reporting

**Direct Reporting Schedule**

means Schedule D of the Agreement (as amended by BIT from time to time)

**End Customer**

means any party that receives or has access to the Data, indices/benchmarks based on the Data or Derived Data, or ATP either directly from the Customer or via one or more Redistributors or a third party

**Force Majeure Event**

means any cause beyond a party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental or regulatory requirement, civil or military authority, Act of God, industrial disputes and acts or omissions

	of providers of telecommunications services, where applicable
<b>Order</b>	means the Market Data order form (as amended by BIT from time to time).
<b>Policy Schedule</b>	means Schedule A of the Agreement (as amended by BIT from time to time)
<b>Premises</b>	means premises occupied by the Customer or its Subsidiaries (where applicable)
<b>Price List</b>	means Schedule B of the Agreement and is the list of charges payable for services from BIT (as published by BIT from time to time)
<b>Raw Data ATP</b>	means an ATP permitting trading instruments the price or value of which is based on, or linked to, the Data or any data that can be reversed-engineered back to the Data
<b>Redistributor</b>	means a Customer who received consent by BIT to disseminate or redistribute the Data externally
<b>Redistribution Licence Charges</b>	means redistribution charges set out in Schedule B
<b>Report</b>	has the meaning ascribed to it in Clause 15
<b>Reporting Schedule</b>	means Schedule C of the Agreement (as amended by BIT from time to time)
<b>Schedule</b>	means a schedule to these Terms, as published by BIT from time to time
<b>Service</b>	means the provision by BIT (directly or indirectly) of the Data, as defined in Schedule A and within the constraints set forth therein, selected by the Customer in the Order
<b>Service Facilitator</b>	means an entity appointed by a Redistributor that has been approved by BIT to facilitate the delivery of Data to the Redistributor's End Customers

**Slave Device**

means any Device which, although capable of receiving or displaying the Data, cannot be used to request access to or update a display of Data, whether in whole or in part

**Subsidiaries**

means those subsidiaries (as defined in Section 1159 of the Companies Act 2006) of the Customer as set out in the Order or as notified to BIT from time to time

**Technical Specifications**

means the Service Definition, Data Formats, Network Specification, and Interface Specification provided to the Customer by BIT, as amended and notified to the Customer from time to time

**Terms**

means these Terms and Conditions

## 2. Service

2.1 BIT shall take all reasonable steps to provide the Service to the Customer on the terms and conditions contained in this Agreement.

2.2 Subject to Clause 12.4, BIT may sub-contract to a third party any or all portions of the Service provided to the Customer under Clause 2.1.

## 3. Licence

3.1 Where the Customer is authorised by BIT to act as a Redistributor (via acceptance of the Customer's appropriate Order), such Redistributor is hereby licenced for the duration of this Agreement only on a non-exclusive, non-assignable, revocable, worldwide basis to re-distribute the Data to End Customers. The Redistributor's licence includes only the right to use, store, process, reproduce, make available and re-distribute the Data as part of the Redistributor's services in accordance with the terms of this Agreement. For the avoidance of doubt, the Redistributor shall not do anything and has no rights in respect of the Data other than expressly granted in this Agreement.

3.2 The Redistributor undertakes, inter alia, to prohibit the re-distribution, re-sale or sublicensing of Data in its contract with End Customers, to advise BIT immediately if it becomes aware of any breach of such prohibition by an End Customer and to promptly enforce the contract on request by BIT in the event BIT becomes aware of any re-distribution, re-sale or sublicensing of Data by an End Customer without BIT's prior written consent.

3.3 The Customer (whether authorised to act as a Redistributor or not) may provide the Data to its Subsidiaries, provided, for the avoidance of doubt, such Subsidiary is listed on the Order or has been notified in writing to BIT prior to the supply of any Data to it. However, for the avoidance of doubt, any supply of Data to an undertaking which is not a "Subsidiary" of the Customer as defined in section 1159 of the Companies Act 2006 shall only be permitted where the Customer is authorised by BIT to act as a Redistributor, and such supply of Data shall be deemed to be a redistribution for the purposes of this Agreement.

3.4 Where a Customer is not authorised as a Redistributor, it shall be deemed to be an End Customer and it is strictly prohibited from re-distributing, re-selling or sublicensing the Data to third parties other than to its Subsidiaries, except with BIT's prior written consent. The End Customer undertakes, inter alia, to only use the Data at the Premises in the ordinary course of its business and not to re-distribute, re-sell or sub-licence the Data to third parties other than its Subsidiaries, except with BIT's prior written consent.

3.5 Where an End Customer provides Data to a Subsidiary, the Subsidiary may use the Data in accordance with clause 3.4 as if it were an End Customer, provided that the Customer shall remain responsible for compliance with the obligations set out in this Agreement and that the Customer shall remain liable for any breaches of this Agreement by any Subsidiary. The Customer shall not be liable to pay a Redistribution Licence Charge in order to provide Data to its Subsidiaries.

3.6 The Customer shall not use the Service or the Data for any illegal purpose or otherwise than in compliance with the applicable laws in the jurisdictions in which the Customer operates. Further, the Customer use of the Service and the Data shall at all times be subject to the Schedule A.

3.7 The Customer shall include the usage of any Data by its Subsidiaries in its reporting under this Agreement and shall be responsible for the payment of all applicable Charges associated with any such use by its Subsidiaries and shall procure that each of its Subsidiaries complies fully with the relevant terms of this Agreement as if it were the Customer.

3.8 Where a Customer who is authorised to act as a Redistributor provides Data to a Subsidiary, the Subsidiary may use the Data in accordance with the licence set out in clause 3.1 as if it was a Redistributor, provided that the Customer shall remain responsible for compliance with the obligations set out in this Agreement and that the Customer shall remain liable for any breaches of this Agreement by any Subsidiary. The Subsidiary shall not be liable to pay a Redistribution Licence Fee in addition to the Redistribution Licence Charges payable by the Customer. For the avoidance of doubt, any rights so granted to a Subsidiary under the licence set out in clause 3.1 shall not be wider than the rights granted to the Customer.

3.9 The Customer shall indemnify BIT and all BIT Verifiers against any claims, actions or proceedings, brought by its Subsidiaries against BIT or BIT Verifiers, respectively, in respect of this Agreement and any liability, costs or expenses (including any reasonable legal costs and any other reasonable expenses) included therewith.

3.10 For the avoidance of doubt, the Customer shall not do anything and has no rights in respect of the Data other than expressly granted in this Agreement. The Customer shall obtain BIT's express prior written consent for any act which is not expressly covered in this Agreement.

3.11 The Customer may downgrade the Service by signing a new Order for a more limited Service, provided it has given BIT at least three months' written notice that it wishes to do so. Any such notice and any such Order will only take effect, and the Service will only be downgraded on an anniversary of the Commencement Date.

## 4. Duration of the Agreement

4.1 The Agreement will become effective on the Commencement Date and shall remain in force unless and until terminated in accordance with clause 5, 9.1, or 13.2.

## 5. Termination of the Agreement

5.1 Unless otherwise set out in this Agreement, either party may terminate this Agreement by giving the other party three months' written notice that it wishes to do so. Any such notice will only become effective, and the Agreement terminated, on an anniversary of the Commencement Date.

5.2 Either party may terminate this Agreement forthwith by giving the other party written notice if that other party:

- a)** makes a UK voluntary arrangement with its creditors; has an administrator appointed or becomes subject to an administration order;
- b)** has a receiver appointed over any of its property or assets, or an encumbrancer takes possession;
- c)** goes into any form of liquidation; or
- d)** takes or is subject to any action similar to that specified in clauses 5.2(a) to 5.2(c) in any jurisdiction.

5.3 BIT may terminate this Agreement or suspend its performance of all or any obligations under it immediately and without liability for compensation or damages (or any other equitable relief) if:

- a)** the Customer fails to comply in all material respects with any of its express or implied obligations under this Agreement (including payment of Charges to BIT) and does not remedy such failure, if capable of remedy, within 30 days of receiving notice from BIT requiring it to do so;
- b)** the Customer ceases to have satisfactory communications facilities in place in accordance with clause 14; or
- c)** where it is directed to do so by a competent regulator with authority over it or, further, where such competent authority terminates its authorization to manage the relevant financial markets for which it distributes the Data pursuant to this Agreement.

5.4 Termination of this Agreement shall not release either party from any liability which at the time of termination has already accrued, nor affect in any way the survival of any other right, duty or obligation of the parties which expressly or by implication survives such termination.



## 6. Charges

6.1 The Customer agrees to pay the applicable Charges for the Data in the manner and frequency as set out in Schedule B, and further in Schedule A (where relevant). Charges should be paid by bank transfer or SEPA direct debit.

6.2 All Charges are subject to Value Added Tax at the prescribed rate, and any other tax, duty or levy imposed by legislation.

6.3 Should the Customer not make payment for the Charges to BIT due pursuant to this Agreement within thirty (30) calendar days of the date of the invoice, such Charges shall automatically accrue default interest, without the need for any written communication, at the rate of EURIBOR for three-month deposits, increased by two percentage points (2%). The applicable EURIBOR rate shall be the rate calculated on the starting date of the default interest.

6.4 In the event that: (i) the Customer's delay in payment lasts for more than twenty (20) calendar days from the expiration of the term; or (ii) the Report referred to in Clause 15 below is sent to BIT with more than twenty (20) calendar days of delay, BIT shall have the right to suspend its Service.

6.5 BIT shall have the right to modify the Charges due and the calculation criteria thereof by giving notice to the Customer at least ninety (90) calendar days prior to the date on which such modification is to take effect. In such event, the Customer shall have the right to terminate the Agreement (in writing) within thirty (30) calendar days following the receipt of the aforementioned notice.

6.6 With reference to the Non-Display and Other Application Usage Charges, the Customer will provide in its agreements with the End Customers, if applicable, that the relevant End Customers shall pay directly to BIT all applicable amounts invoiced by BIT for Non-Display Usage and Other Applications Usage in the amount, manner and frequency as set out in Schedule B and further in the other Schedules.

## 7. Notices and Modifications to the Service

7.1 Notices under this Agreement may be delivered by hand or sent by email or facsimile transmission. Notices shall be effective on the date of receipt or three working days after dispatch whichever is the earlier.

7.2 BIT reserves the right to determine the form and contents of the Service and, in particular, to modify and supplement from time to time the technical, functional, administrative and operative methods of supply of the Service itself, wherever necessary for complying with provisions of law or due to a change in the organization of the financial markets or modifications or supplements to the Technical Specifications. BIT shall communicate to the Customer such modifications or supplements at least thirty (30) calendar days prior to their entry into effect, unless such modifications or supplements are a consequence of the compliance with provisions of law or due to an emergency. In the event of modifications or supplements pursuant to this clause, the Customer shall have the right to terminate the Agreement by providing thirty (30) calendar days' written notice to BIT. The parties agree that should such modifications or supplements prevent the Customer from receiving any Service for at least 14 consecutive calendar days, then the variable component of the relevant Charges shall be reduced in proportion to the time period in which the relevant Service has not been utilized, it being understood that the Customer is obliged to communicate such impediments in a timely manner.

## 8. Assignment

8.1 The Customer may not assign or transfer any rights or obligations under this Agreement without BIT's prior written consent.

8.2 BIT shall have the right to assign any of its rights and/or obligations under this Agreement to another party, such assignment to become effective on written notice to the Customer.

## 9. Variations

9.1 BIT may amend either:

- a) these Terms at any time on ninety (90) calendar days' written notice; or
- b) any Schedule that forms part of this Agreement at any time on thirty (30) calendar days' notice (subject to Clause 6.5).

In the event that the Customer considers any such amendment to be unfavorable, it may terminate this Agreement on the date the amendment comes into effect, provided it gives BIT notice in writing, such termination to be effective on the date the amendment in question is to come into effect.

9.2 Except as provided in clause 9.1, this Agreement may only be amended in writing by duly authorized representatives of the parties.

## 10. Waiver and Entire Agreement

10.1 Failure by either party to exercise any right or remedy under this Agreement will not constitute a waiver of that party's rights or remedies.

10.2 This Agreement is the parties' entire understanding of the contract between them with respect to the subject matter and supersedes all prior agreements, representations and proposals, oral or written.

10.3 Each party confirms that:

10.3.1 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, neither party shall be under any liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement; and

10.3.2 in entering into this Agreement it has not relied on any representation or warranty or undertaking which is not contained in this Agreement, or any document referred to in it.

## 11. Intellectual Property Rights

11.1 The Customer agrees that the copyright, database rights or other intellectual property rights of whatever nature contained in the Service and the Data shall remain the property of BIT.

11.2 When the Customer reproduces excerpts from the Data (strictly in accordance with clause 3), it shall attribute the source of the Data to BIT. Any reference to any BIT trade or service mark by the Customer in documents shall acknowledge BIT's rights.

11.3 BIT warrants that it has all necessary rights to permit the Customer to use the Data within the terms of this Agreement.

11.4 A Redistributor shall ensure, when re-distributing the Data, that the Data is always identified as being from BIT.

## 12. Liability

12.1 BIT and BIT Verifiers shall not be liable to the Customer in any circumstances for any loss, whether direct or indirect, of profits, business, anticipated savings, wasted expenditure or consequential loss in respect of provision of the Service.

12.2 Subject to clause 12.1 above, the liability of BIT and BIT Verifiers for direct loss or damage (except in relation to death or personal injury) arising from its total or partial failure to perform any obligation under this Agreement shall, in respect of any one incident or series of incidents attributable to the same cause, be limited in aggregate to £50,000 (fifty thousand pounds Sterling or the equivalent in Euro).

12.3 The Customer acknowledges that in using the Data it relies solely on its own skill, knowledge and judgement. BIT shall use reasonable efforts to correct errors or omissions in its Data whenever such activity falls within its control and is reasonably possible. Nonetheless, it is agreed that BIT's responsibility and liability in this respect is limited to the processing and transmission of the Data, as the verification of their accuracy, truthfulness and completeness shall not fall within its obligations. In case of errors, BIT shall not be obligated to rectify the values of the Data retroactively.

12.4 Subject to the provisions regarding limitations on liability, responsibility and indemnities in this Agreement, BIT shall be liable for the performance of any sub-contractors in providing the Service in accordance with Clause 2.2

## 13. Force Majeure

13.1 Neither party shall be liable to the other for any delay or failure to fulfill any obligation under this Agreement to the extent such delay or failure was due to a Force Majeure Event.

13.2 Either party may terminate this Agreement on notice in writing to the other if due to a Force Majeure Event a party is unable to fulfill its obligations under this Agreement for more than thirty (30) continuous calendar days. Neither party shall have any liability to the other in respect of termination of this Agreement as a result of such a Force Majeure Event.

## 14. Technical compliance and Communications

14.1 The Customer undertakes that, in addition to this Agreement, it shall comply with any applicable provision contained in the Technical Specifications (which the Customer acknowledges it has received or has access to on BIT's website).

14.2 In the event that BIT considers that the Customer's use of the Service is causing, or is likely to cause, technical problems for BIT or interference with the continued delivery of the Service to other customers, then BIT may suspend the Service to the Customer immediately without notice.

14.3 The Customer acknowledges that the implementation of all operations necessary for the connection of its equipment (hardware and software) with the Systems, as well as the maintenance of the above-mentioned equipment, shall not be the responsibility or cost of BIT.

14.4 BIT shall not have any obligations to provide the Service under this Agreement unless the Customer has in place satisfactory communications facilities to receive the Service, in accordance with such arrangements as may have been approved in advance by BIT in writing.

## 15. Reporting and Direct Reporting

15.1 The Customer shall provide BIT or its employees, representatives, sub-contractors, agents or any third parties acting on behalf of BIT (each a "BIT Verifier") with a report in accordance with Schedule C, or a Customer who is a Direct Reporting Customer shall provide BIT Verifiers with a report in accordance with Schedule D (each a "Report"). In the event that any such Report is submitted late by the Customer or the Direct Reporting Customer (as applicable), BIT reserves the right to:

- a) reduce the 30 day payment period referred to in Clause 6; and/or
- b) estimate the Charges due, which sum shall be paid by the Customer in accordance with Clause 6; and/or
- c) apply interest to the sums payable by the Customer based on the content of the Report (including, where it has under-estimated the Charges due, the balance) at a like rate and in a like manner to that specified in Clause 6. Interest shall run from the date 30 days after the day on which the Report was due.

15.2 Further to BIT's rights in Clause 15.1, in relation to Direct Reporting Customers, BIT shall have a further right to estimate the Direct Reporting Customer's monthly Charges where such Direct Reporting Customer fails to submit its Report in accordance with this Agreement. In such a case, BIT will formulate the estimated Charges by using the amount of Charges from the previous period and apply an administration fee of up to ten percent (10%) of this value.

15.3 Any request by the Customer for repayment of overpaid Charges based on an inaccurate Report must be made within 6 months of the end of the month to which the inaccurate Report relates. The Customer shall not be entitled to repayment of any such overpaid Charges requested after this period. Further, the amount of any repayment made to the Customer pursuant to this Clause 15.3 shall not exceed 6 months of overpaid Charges.

## 16. Verification

16.1 The Customer shall allow BIT Verifiers at all reasonable times on reasonable notice to have access to, and to inspect its operational controls, its accounts, records and other documents relating to the Service (in both hard copy and machine readable form), and permit BIT Verifiers to take copies or extracts and on demand to supply copies to BIT Verifiers, all for the purpose of BIT verifying the accuracy of the Reports referred to in clause 15.1. These rights of inspection shall include reasonable access to the Customer's premises during business hours. Where the Customer is a Redistributor, such Redistributor shall ensure that similar rights are in force with its End Customers to maintain similar records, and maintain BIT Verifiers' rights to access and inspect the End Customer's records.

16.2 If a BIT Verifier's investigation in terms of clause 16.1 discloses that the Charges paid by the Customer over the period being investigated were more than five percent (5%) inaccurate, the reasonable cost of that investigation shall be paid by the Customer. In any case where a BIT Verifier's investigation discloses that any of the Reports were inaccurate by understatement, the Customer shall pay an amount equal to the difference between the amount which should have been previously paid to BIT if such Report had been accurate and the amount actually paid to BIT plus interest at a like rate and in a like manner to that specified in Clause 6.3. Interest shall run from the date 30 days after the day on which each relevant Report was due. Such amount shall be paid to BIT within 5 working days from the relevant invoice's issue. In case a BIT Verifier's investigation discloses that any of the Reports were inaccurate by excess, BIT shall issue a credit note

to the Customer. In accordance with the audit findings Report, BIT may govern its credit/debt relations directly with the audited Customer. The amount of any such credit note issued to the Customer pursuant to this Clause 16.2 shall not exceed 6 months of overpaid charges.

16.3 Notwithstanding Clause 16.2, BIT reserves the right to charge the Customer reasonable costs (based on a scale of costs published by BIT from time to time) in conducting a verification visit if a previous verification visit has revealed defects in the operational controls or failure by the Customer to correctly report under Clause 15 or any other failure to comply with this Agreement.

16.4 A Customer which is a Redistributor will provide to BIT Verifiers, on request, for the duration of this Agreement, access free of charge, at a BIT Verifier's premises to the Redistributor's service on a reasonable number of Devices for monitoring purposes. In providing such access the Redistributor need not provide computer hardware, other than computer hardware which is proprietary to the Redistributor.

## 17. Severability

17.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of all other provisions (and, if applicable, the remainder of the provision in question) shall not be affected.

## 18. Confidentiality

18.1 The parties shall, and BIT shall procure that BIT Verifiers shall, keep confidential all information relating to this Agreement unless such information has become public knowledge otherwise than in breach of this clause or disclosure is required by law or a party's regulatory body or disclosure is made in confidence to their Group (as defined in the Order Form) and professional advisers. This clause 18.1 survives termination of this Agreement.

## 19. Rights of Third Parties

19.1 With the exception of the rights of the Subsidiaries to enforce the terms contained in clause 3 of this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.



19.2 The parties to this Agreement may by written agreement rescind or vary any term of this Agreement without the consent of any third party (which, for the avoidance of doubt, includes the Subsidiaries).

## 20. Choice of Law

20.1 Unless explicitly indicated to the contrary in the Order, this Agreement shall be governed by, and construed in all respects in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.

## 21. Order of Precedence

Where there is a conflict between any of: i) these Terms; ii) the Price List; iii) any Schedules other than the Price List; and iv) any Order(s), the prevailing terms shall be those contained in the following documents in prevailing order:

- a)** the Order;
- b)** any Terms;
- c)** the Price List
- d)** any Schedules other than the Price List

# CONTACT

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